

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7647 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VARSHABEN JITENDRAKUMAR SHAH

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

Ms. Sangeeta N Pahwa for M/S THAKKAR ASSOC.

for Petitioner

MR HS MUNSHAW for Respondent No. 1

Mr SP Hasurkar, Govt.Solicitor for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/08/98

ORAL JUDGEMENT

RULE.

The petitioner's husband-Jitendra M Shah was working as Deputy Accountant in the office of the District Primary Education Officer of Vadodra District Panchayat. A departmental enquiry was instituted against him. He expired on 17.10.1996. While working, it is alleged that the deceased Jitendra M Shah was involved in

financial irregularities and charge-sheet was issued on 31.12.1990. He died on 17.10.1996. By order dated 7.10.1996, a penalty of reducing him to the rank of Sr.Accountant Clerk was inflicted. However, the said order was served on 19.10.1996 on the widow of the deceased. By order dated 3.3.1997, a direction has been given to implement the penalty of reversion by reducing the salary of the petitioner placing him in the lower pay scale of Rs.1200-2040 w.e.f. 7.10.96. As a result thereof, a sum of Rs.2,07,154.75 is required to be recovered from the petitioner. The petitioner is also entitled to certain amounts due against LIC, State Insurance, Gratuity etc. The respondent intends to adjust the said amount against the dues.

2. It is contended by Ms. Sangeeta Pahwa, learned Advocate appearing for the petitioner that the penalty has been inflicted against a dead person, and therefore, the same is ex-facie illegal and void. In alternate, it is submitted that the penalty inflicted cannot be implemented without the approval of the Government. In this regard, she has placed reliance on a G.R. dated 8.10.1993. She has invited my attention to sub-para (4) of the said G.R. which reads as under:

"In cases where the delinquent dies after the decision regarding the penalty but before implementation of the same, the papers are required to be sent to Government as per the prevalent practice for taking appropriate decision."

It appears from the preamble of the Resolution that the said Resolution has been passed to meet with the hardship faced by the dependants of the deceased who was facing the departmental enquiry.

3. Mr H S Munsha, learned Advocate appearing for the respondent No.1 submitted that the order of imposing the penalty was passed before the death of the deceased husband of the petitioner. He has tried to explain that there was certain delay in delivering the copy of the order, as it took some time in the process like typing etc. A detailed affidavit in this regard, has been filed by Mr P T Pandya, District Primary Education Officer, Baroda. In my view, there is no substance in the contention of the respondent. Simply because after the order was passed and it was not issued for certain reasons, it cannot be said that the order of penalty inflicted is not implemented. Thus, in my view, the

impugned order dated 7.10.1996 is in violation of the G.R. dated 8.10.1993, inasmuch as no approval has been obtained from the State. The said order deserves to be quashed and set aside.

4. In view of the aforesaid, this Special Civil Application is allowed. The impugned order dated 7.10.1996 inflicting the penalty on the deceased husband of the petitioner, is quashed and set aside. However, it will be open for the respondent to proceed in accordance with the Resolution dated 8.10.1993 or to take appropriate steps permissible in accordance with law. Rule made absolute to the aforesaid extent.

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msp.